

No items qualify for the Pollution Control Facilities exemption in and of themselves. No transactions are exempt on the basis of the pollution control exemption unless certifications are obtained as described in 86 Ill. Adm. Code 130.335(a) of the Department's rules. (This is a GIL).

December 12, 2002

Dear Xxxxx:

This letter is in response to your letter dated September 24, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

Section 130.335 (Pollution Control Facilities) of Part 130 (Retailers Occupational Tax) of the Illinois Department of Revenue Regulations covers pollution control facilities. My client installs and repairs gasoline station equipment, including, but not limited to, the new air pollution control features of the gasoline dispensing units. I have reviewed the above cited regulation and all of your sunshine letter rulings that are posted on the internet for the purpose of trying to determine which portions of the fuel dispensing equipment (more commonly referred to as 'the pump') would qualify for this exemption, and I cannot find any specific guidance. I do not want my client charging customers tax on exempt equipment; but, I do not want my client exposed to failing to charge tax. I am aware of the certification requirement of the regulation. My question, what can I refer my client to that will provide it, with specificity, a listing of what is exempt and what isn't; and, tangential, to the extent of any ambiguities, how does it protect itself. .if in doubt, charge the customer tax?

To assist you further with my question, when servicing said equipment and replacing any defective parts, some of the parts would be included in the pollution control effort, and other parts are incidental to it. The term 'incidental' would refer, for example, to the piping that removes the vapors once they have been captured by the pollution control device.

With respect to the replacement of current equipment, in some instances the customer of my client will merely have its existing equipment upgraded to conform with the new pollution control devices. And I assume, when one is merely doing an upgrade, that all parts utilized to perform such upgrade would therefore qualify.

In some instances the customer of my client is buying brand new equipment. Of course, the primary purpose of the equipment is to dispense fuel; however, it does have all of

the new pollution control devices built into it. In that instance, must my client prorate the cost, or would the whole of the equipment then be exempt?

I'll appreciate your cooperation and assistance in this matter.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.335 concerning Pollution Control Facilities. The pollution control facilities exemption extends to "any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "pollution" is defined in the Environmental Protection Act (415 ILCS 5/1 et seq.), or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property."

No items qualify for the Pollution Control Facilities exemption in and of themselves. No transactions are exempt on the basis of the pollution control exemption unless certifications are obtained as described in 86 Ill. Adm. Code 130.335(a) of the Department's rules. Items that can be used in both qualifying and non-qualifying activities must be used primarily in qualifying activities before the exemption has application.

As a general proposition, vapor recovery equipment used by petroleum product retailers at filling stations can qualify for the pollution control facilities exemption if the primary purpose of the equipment is to control vapor pollution at gasoline station dispensers. If the primary purpose of the equipment is to confer economic benefits upon the users, then it will not qualify for the exemption.

Sales of gasoline dispensers that have vapor reduction equipment incorporated within said dispensers do not qualify for the exemption because the primary purpose of the dispensers is to dispense gasoline to customers' fuel tanks and not to reduce pollution. Because this primary purpose of dispensing petroleum products confers economic benefits upon filling station retailers, the dispensers are fully taxable despite the fact they contain ancillary vapor reduction mechanisms. Lines that move gasoline fumes during refueling of vehicles can qualify for the exemption if they are an integral part of a qualifying pollution control device.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.